147 FERC ¶ 61,088
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Guttman Energy, Inc., d/b/a
Guttman Oil Company, and
PBF Holding Company, LLC

v. Docket No. OR14-4-000

Buckeye Pipe Line Company, L.P. and
Laurel Pipe Line Company, L.P.

ORDER DISMISSING COMPLAINT, IN PART, AND ESTABLISHING HEARING

(Issued May 2, 2014)

1. On October 15, 2013, Guttman Energy, Inc. and PBF Holding Company, LLC (Guttman, PBF, or Complainants) filed a complaint against Buckeye Pipe Line Company, L.P. and Laurel Pipe Line Company, L.P. (Buckeye and Laurel), asserting that Buckeye and Laurel misclassified Guttman shipments as interstate rather than intrastate movements, and challenging Buckeye's market-based rates within Pennsylvania.

2. As discussed below, the Commission dismisses the complaint against Laurel, finds Guttman's movements to be interstate transportation, and establishes a hearing to examine whether Buckeye possesses market power in Harrisburg, Pittsburgh, and Chelsea Junction, Pennsylvania.

Parties

3. Guttman is a fuels marketer and fuel management solutions provider serving commercial, wholesale, and retail marketers. Guttman purchases refined petroleum products for resale to its wholesale and retail customers, and is a contract purchaser of refined petroleum products from PBF.

4. PBF is an independent refiner and marketer of petroleum products and through its subsidiaries owns and operates three petroleum refineries at Delaware City, Delaware, Paulsboro, New Jersey, and Toledo, Ohio. PBF supplies its customers with petroleum products produced at its refineries or obtained by purchase or exchange from other refiners or marketers.

5. Buckeye and Laurel are subsidiaries of Buckeye Partners, LP. Buckeye and Laurel are affiliated common carriers. The Buckeye interstate service and the Laurel intrastate service use the same pipeline and terminal facilities in the relevant area. Buckeye serves major population centers in Pennsylvania, New York, and New Jersey through approximately 925 miles of pipeline. Buckeye connects with Laurel in Pittsburgh, Pennsylvania. The Laurel pipeline system transports refined petroleum products through a 350-mile pipeline extending westward from four refineries and a connection to the Colonial pipeline system in the Philadelphia area to Reading, Harrisburg, Altoona/Johnstown, Greensburg and Pittsburgh, Pennsylvania.

Background

6. PBF is the contract supplier of petroleum products to Guttman. PBF assumed the rights and obligations under a contract to sell product to Guttman on July 1, 2013. The contract entitles but does not require PBF to supply products from Delaware to Chelsea Junction, Pennsylvania. Guttman takes delivery of product in Chelsea Junction for transportation downstream to points in Pennsylvania. Guttman makes the monthly nominations for service.

7. PBF argues other intrastate sourcing is possible from an operational standpoint to deliver the contracted volumes to Guttman at Chelsea Junction, rather than an assumed interstate Delaware option. PBF states the higher interstate tariff rates cause a competitive disadvantage for PBF relative to other suppliers that deliver products to Chelsea Junction using intrastate transportation. PBF states it has to absorb the higher cost, and/or provide a discount.

8. In 1991, the Commission allowed Buckeye to proceed with an experimental program for interstate rate regulation.[1] As pertinent in the instant case, Opinion No. 360 granted market-based rates at various origins and destinations, subject to annual review. On February 22, 2013, the Commission terminated the experimental program, but allowed Buckeye to continue charging market-based rates to the destinations involved in

[1] *See Buckeye Pipe Line Co., L.P.*, Opinion No. 360, 53 FERC ¶ 61,473 (1990), *aff'd on reh'g,* Opinion No. 360-A, 55 FERC ¶ 61,084 (1991) (Opinion No. 360).

the instant Complaint, among other destinations.[2] The Commission stated in the order terminating the experimental program that a shipper could file a complaint asserting that a market is no longer competitive because of changed circumstances, and that Buckeye, in fact, does not lack significant market power.[3]

Complaint

9. The Complaint alleges four grounds for concluding that Buckeye's charges for transportation from Chelsea Junction to points westward in Pennsylvania are inapplicable or unlawful under the Interstate Commerce Act (ICA): (1) Buckeye charged its higher, interstate rates for Guttman's shipments originating at PBF's Delaware City, Delaware refinery, when it should have classified those shipments as intrastate shipments transported by Laurel under lower Pennsylvania Public Utility Commission (PaPUC) tariff rates; (2) the interstate Buckeye rates in Commission tariffs violate ICA section 2 because they are higher than the intrastate Laurel rates in PaPUC tariffs for transportation between the same points within Pennsylvania; (3) the interstate Buckeye rates in the Commission tariffs violate ICA section 3(1) because they are unduly discriminatorily higher than the intrastate Laurel rates in PaPUC tariffs for transportation between the same points within Pennsylvania; and (4) the Buckeye rates are unjust and unreasonable under ICA section 1(5) because they are too high.

10. Complainants point out that Buckeye and Laurel provide identical service over the same physical facilities, and assert the Carriers, not the shippers, assign volumes nominated for service between Buckeye and Laurel. Thus, the Carriers determine whether the shipment will be subject to the Buckeye interstate tariff or the Laurel intrastate tariff. Complainants allege Laurel acted and continues to act in concert with its affiliate Buckeye in a manner that could frustrate the Commission's effective regulation of Buckeye, and request the Commission to exert control over Laurel by disregarding the separate corporate structures of the Carriers and treating Buckeye and Laurel as a single pipeline providing interstate service.

11. Complainants allege the level of competition in the relevant markets is now insufficient to support Buckeye's market-based rate authority due to a change in certain facts that supported the original competitive findings in Opinion No. 360. Complainants provide an analysis, derived from multiple sources, showing the destination markets of Harrisburg, Pennsylvania and Pittsburgh, Pennsylvania experienced significant changed

[2] *See Buckeye Pipe Line Co., L.P.*, 142 FERC ¶ 61,140 (2013) (Buckeye Order 2013).

[3] *Id.* P 14.

circumstances, supporting its contention that Buckeye's interstate rates are unjust and unreasonable.

12. Further, Complainants allege there is market power in the origin market of Chelsea Junction, Pennsylvania. Complainants claim neither Opinion No. 360 nor the evidence submitted by Buckeye in support of its prior application contained any analysis of market power in any origin market, because the Commission granted market-based authority prior to Order No. 572 (which laid out the Commission's market-based rate methodology).

Relief Requested

13. Complainants request that the Commission issue an order pursuant to section 15(1) of the ICA requiring the Carriers to cease and desist from charging and collecting interstate tariff rates for intrastate shipments, find Buckeye's rates for interstate services are unjust and unreasonable under section 1(5) of the ICA, and prescribe just and reasonable replacement rates pursuant to section 15(1) of the ICA. Further, Complainants seek to terminate Buckeye's market-based rate authority in the pertinent destination markets and request the Commission to direct Buckeye to reduce its interstate rates to eliminate the discrimination between Buckeye's interstate rates and Laurel's intrastate rates. Finally, Complainants ask the Commission to award damages pursuant to section 16 of the ICA for the injury caused by such unlawful actions of the Carriers.

Notice

14. Notice of the Complaint in Docket No. OR14-4-000 issued on October 15, 2013. The notice provided a November 4, 2013 date for comments and answers. Both Buckeye and Laurel filed answers and motions to dismiss the Complaint.

Discussion and Commission Determinations

A. Whether Guttman Pays an Interstate Rate for Intrastate Transportation

15. The threshold issue to be determined in this complaint proceeding is whether Guttman is being unlawfully charged interstate tariff rates for intrastate transportation allegedly between origin and destination points within Pennsylvania, in violation of section 1 of the ICA.

16. Buckeye clarifies that the Laurel system extends from origin points in the Philadelphia area, including the origin at Chelsea Junction, to destinations in the Harrisburg and Pittsburgh markets. Laurel leases capacity to Buckeye, who uses the leased capacity to provide interstate transportation under FERC tariffs from Chelsea Junction and other origins to Harrisburg and Pittsburgh market destinations.

Not all shipments received at Chelsea Junction originate from the same location; some shipments originate from refineries within Pennsylvania, and those volumes are classified as intrastate volumes that move under Laurel's PaPUC tariffs. Other volumes originate in Delaware or elsewhere outside of Pennsylvania, and are classified as interstate in nature and move under Buckeye's tariffs at FERC.

17. Buckeye contends all of the shipments at issue here originate in the Delaware City, Delaware refinery (Del City) operated by an affiliate of PBF. Shipments from Del City to Chelsea Junction are delivered by Delaware Pipeline Company LLC, to Sunoco Pipeline, L.P., at Sunoco's Twin Oaks Pump Station I in Pennsylvania. Physically, from Sunoco's Twin Oaks Pump Station, a shipment from Del City is pumped directly into Buckeye's system for transportation to downstream destinations. Buckeye owns no tankage at Chelsea Junction, and volumes are transferred from Sunoco's system without interruption or pause. According to Buckeye, Chelsea Junction, having no Buckeye storage, is not a market center, market hub, liquid point, or distribution point.

18. Buckeye schedules and records each batch of petroleum products entering its system under the Transport4 system (T-4 system), which tags the batch based on origin. Each batch delivered at Chelsea Junction must have the ultimate destination identified before Buckeye accepts it for transportation, which is reflected in the T-4 records.

19. Buckeye maintains the movements in question are continuous, uninterrupted interstate movements. Buckeye argues that Del City refinery shipments never come to rest or enter storage at the interconnection with Sunoco Pipeline and the total time from the origin at the Del City refinery to the Buckeye system is only six hours. Buckeye argues that such a continuous, uninterrupted movement originating in one state and terminating in another is interstate in character, and cannot be altered simply because of the existence of a contract to change title during such a movement.

20. Guttman alleges Buckeye is unlawfully classifying its shipment as an interstate shipment and consequently is charging Guttman the higher interstate tariff rate rather than the lower intrastate tariff rate. Guttman points to its contract with PBF as support for this contention, asserting that title and risk of loss for the petroleum products pass from PBF to Guttman at the Chelsea Junction meter point where the Sunoco Pipeline connects to the Buckeye/Laurel facilities. Guttman submits that from Chelsea Junction it transports its petroleum products to delivery points in the Pittsburgh and Altoona, Pennsylvania areas. Guttman also states that it could potentially ship petroleum products to delivery points in the Harrisburg, Pennsylvania area as well.

21. Guttman adds that it is further harmed by the higher interstate rates because, while it has no direct knowledge, it has reason to believe that some of its competitors are being charged the lower Laurel intrastate rates from the Chelsea Junction, Pennsylvania point. Guttman concludes that both it and PBF are harmed because they are burdened by the

higher cost of interstate transportation and they have to either absorb the additional costs or pass them along to customers creating a competitive disadvantage.

22. Buckeye counters that under section 10(2) of the ICA it is the obligation of Buckeye to ensure that it classifies shipments correctly. Buckeye states it cannot ignore the interstate nature of volumes seamlessly nominated and delivered into its system from a Delaware refinery that move in a continuous through transportation service to points in Pennsylvania. Buckeye states that Guttman could acquire properly classified intrastate shipments if its products were sourced from a Pennsylvania refinery. Buckeye contends that it cannot pretend that the Del City shipments are not interstate in character, nor cooperate with Guttman's request to identify those shipments as intrastate movements by virtue of the title transfer at the Chelsea Junction meter point.

23. Buckeye argues that the Commission has never found that a continuous through interstate transportation movement via oil pipeline can be "broken" into an interstate and an intrastate leg without any storage or interruption in physical flow at all, merely because of a decision by the shippers to create a change of ownership at one point in the continuous movement. Buckeye states that Supreme Court decisions and other precedents have held that a mere change in ownership, or related billing changes, cannot make one leg of an interstate shipment into an intrastate shipment.[4] Finally, Buckeye asserts that accepting Guttman's characterizations of applicable precedent could allow parties to defeat or otherwise game the system to avoid applicable rates and regulation under the ICA and could allow parties to eliminate Commission jurisdiction in numerous markets throughout the country.

Commission Determination

24. The Commission has reviewed all the pleadings filed in this proceeding, including a number of answers and responses that were filed after the respondent's answer. For the purposes of determining jurisdiction, the Commission need not discuss or address these additional pleadings since the Commission can render a decision based upon the initial pleadings alone, and the Commission's procedures do not ordinarily allow answers to answers, unless permitted by the decisional authority. Accordingly, insofar as they pertain to this jurisdictional issue, all supplemental pleadings filed after the answer to the complaint are rejected. Based upon the applicable precedent and facts surrounding the transportation of the PBF/Guttman products, the Commission finds that Buckeye has properly charged Guttman its interstate tariff rate. Guttman's complaint that Buckeye is

[4] *Citing Pennsylvania R. Co. v. Clark Bros. Coal Mining Co.*, 238 U.S. 456, 465 (1915); *United States v. Erie R. Co.*, 280 U.S. 98, 101 (1929); *Dennery v. Houston & Texas Central R. Co.*, 157 ICC 164, 165 (1929).

unlawfully charging Guttman an interstate rate for intrastate transportation in contravention of section 1 of the ICA is dismissed.

25. The Commission finds that in determining whether a shipment is interstate in nature depends on the intent of the shipper at the time the initial interstate transportation commences. In this case, despite Guttman's claimed ignorance as to the origins of its petroleum product shipments, when PBF nominates its shipments on the T-4 system it is clear those shipments are interstate in nature because they originate in Delaware and are shipped to Pennsylvania via two other interstate pipelines before they are transferred to Guttman on the Buckeye system at Chelsea Junction, Pennsylvania. The products originating at PBF's Delaware refinery are part of one continuous interstate movement that terminates at Guttman's delivery points on the Buckeye system in Pennsylvania. There are no facts showing there is any break in the continuous nature of the interstate movement that would render Guttman's shipments intrastate in nature. Further, the fact that by contract title and risk of loss pass from PBF to Guttman at the Chelsea Junction, Pennsylvania point on the Buckeye/Laurel facilities does not alter the interstate character of the transportation.

26. While Guttman alleges that competing shippers pay the intrastate rate for shipments beginning at Chelsea Junction, Pennsylvania, that situation may simply be attributable to the fact that those shippers are sourcing their petroleum products from Pennsylvania refineries with access to Chelsea Junction. Thus, any competitive advantage that Guttman's competitors may have is due to the sourcing of their supply from Pennsylvania and not any violation of the ICA by Buckeye. It therefore does not appear to the Commission that Buckeye is improperly classifying any interstate shipments as intrastate shipments, or vice-versa.

B. Laurel as a Party

27. Laurel submits the Commission should summarily dismiss it as a respondent in the proceeding, because it is not a common carrier subject to the jurisdiction of the Commission. Laurel notes its intrastate rates and terms of service are regulated by the PaPUC. Laurel argues that while the Complaint was filed against both Buckeye and Laurel, the text of the Complaint challenged only the interstate rates charged by Buckeye, and not Laurel's intrastate rates or terms of service.

28. Laurel states that the dismissal of Laurel as a respondent would be consistent with the Commission's rejection of shippers' previous attempts to bootstrap non-jurisdictional entities into Commission proceedings. Further, Laurel argues the Complainants' request that the Commission disregard the separate corporate structures of Buckeye and Laurel is without merit, unsupported, and insufficient as a matter of law. Laurel states that as a policy matter, if the Complainants' position were accepted, and the Commission disregarded the corporate forms of Buckeye and Laurel in this proceeding, such precedent would render moot all corporate parent and affiliate distinctions for regulatory

purposes. Moreover, this would result in non-jurisdictional entities being dragged into any Commission proceeding, thereby inappropriately expanding the Commission's jurisdiction and complicating the administrative process.

29. In response to Laurel's arguments to dismiss Laurel as a respondent to the Complaint, Complainants assert the motion does not provide a basis for dismissing Laurel from the proceeding. Complainants reiterate the contention that Laurel and Buckeye operate as a single pipeline system between Chelsea Junction and delivery points in Pennsylvania. Complainants state that, contrary to Laurel's motion, Laurel is implicated in the conduct that is the subject of the Complaint and should be included in the proceeding to facilitate the investigation and the fashioning of effective relief.

Commission Determination

30. Guttman's transportation is properly classified as interstate in nature; therefore, Guttman's argument that Buckeye and its affiliate Laurel are acting in concert to frustrate effective Commission regulation over Buckeye under the ICA is without merit. Nor, as discussed below, is there any basis for including Laurel as a respondent simply because Complainant's allege Buckeye's rates are too high vis-à-vis Laurel's. There is no reason to disregard the corporate structures of Buckeye and Laurel and exert control over Laurel by treating them as a single pipeline providing interstate service. Accordingly, as Guttman's remaining allegations concern Buckeye's interstate market-based rates, the Commission dismisses the Complaint against Laurel.

C. Discrimination Claims under ICA Sections 2 and 3(1)

31. Section 2 of the ICA prohibits an interstate common carrier from collecting different compensation for like services under substantially similar circumstances. Section 3(1) of the ICA prohibits a common carrier from engaging in undue or unreasonable discrimination by creating an unreasonable or undue preference or an unreasonable or undue prejudice or disadvantage. Guttman asserts that Buckeye is violating both sections 2 and 3(1) of the ICA because it charges 56 to 74 percent more for interstate traffic than Laurel charges for like and contemporaneous intrastate traffic under circumstances and conditions that appear to be precisely the same. Guttman also argues that Buckeye assesses a special handling charge of 7.04 cents per barrel on the interstate shipment of certain products that Laurel does not assess for intrastate shipments of the same products.

32. Buckeye asserts that Guttman's discrimination claims under the ICA are without merit and urges the Commission to dismiss them. Buckeye contends the section 2 prohibition against charging different rates for similar services only applies to services subject to the provisions of the ICA. Buckeye points out that these provisions of the ICA do not apply to the different rates charged by Buckeye under the ICA and Laurel under the governing statutes administered by the PaPUC.

33. Similarly, Buckeye explains that the anti-discrimination provision of section 3(1) of the ICA does not apply to differences in rates between Buckeye and Laurel because it only applies to undue preferences or prejudices between similarly situated shippers. Buckeye submits that intrastate shippers on the Laurel system are not similarly situated to interstate shippers on the Buckeye system. Buckeye maintains that Buckeye and Laurel operate under different statutes and different regulatory regimes, and the Commission has determined that interstate and intrastate movements are distinct services and therefore cannot be similarly situated.[5]

34. Finally, Buckeye states that if Guttman is concerned about differences in rates between Buckeye and Laurel, the appropriate remedy would lie under section 13(4) of the ICA. Buckeye states that section empowers the Commission to remedy a situation where an intrastate charge causes an undue or unreasonable preference between intrastate and interstate shippers. Buckeye asserts, however, that Guttman has not made such an allegation.

Commission Determination

35. The Commission finds that Guttman failed to support its claims that Buckeye is engaging in discriminatory conduct in violation of sections 2 and 3(1) of the ICA. Violations of these provisions of the ICA can only occur when a common carrier such as an oil pipeline charges different rates for similar interstate services subject to the Commission's jurisdiction under the ICA.

36. Here, although Buckeye and Laurel use the same pipeline facilities, Buckeye provides interstate services under the ICA and Laurel provides intrastate service subject to regulation by the PaPUC. Moreover, as Buckeye has stated, the Commission previously found that interstate and intrastate service are distinct services.[6] The Commission also finds that if Guttman's interpretation of the anti-discrimination provisions of the ICA were accepted, it could undermine the Commission's regulation of interstate oil pipelines by requiring the Commission to reduce an interstate rate to conform to an intrastate rate set by a state commission. In any event, as discussed next, Guttman will have the opportunity to challenge the justness and reasonableness of Buckeye's interstate rates by showing that Buckeye no longer lacks market power in certain markets in Pennsylvania.

[5] *Enterprise TE Products Pipeline Co., LLC,* 143 FERC ¶ 61,191, at P 22 (2013) (*Enterprise*).

[6] *Id.*

D. Challenge to Market Based Rates under ICA Section 1(5)

37. Complainants claim there have been significant changes in the ownership and operational status of pipelines that were considered competitive alternatives to Buckeye in its prior market-based rate application in 1991. Complainants also cite a range of data to support an examination of Buckeye's market-based rate authority dating back to the 1980's, as well as data from 2005.

38. Complainants base their definition of the origin market as the geographic area where a shipper on a pipeline originates service, and includes the good competitive alternatives that could thwart an exercise of market power. Complainants state that Guttman originates shipments on Buckeye at Chelsea Junction. Complainants provide a partially updated analysis based on preliminary information regarding potential alternatives for shipments originating at Buckeye's Chelsea Junction receipt point, and assert that Buckeye possess market power over shipments originating at, and upstream of, Chelsea Junction.

39. Buckeye argues that Complainants failed to meet their burden of showing that the markets are no longer sufficiently competitive as when the Commission granted market-based rates in Opinion No. 360. Buckeye argues further that the Complainants failed to show the rates in question should be subject to challenge.

Commission Determination

40. The Complaint raises the question of determining what threshold evidence is necessary for a Complainant to demonstrate changed circumstances in a given market that may warrant a hearing to consider revocation of an oil pipeline's previously approved market-based rate authority. While the Commission does not expect that a complainant will complete an entire market analysis similar to what is necessary in an application for market-based rates, the Commission does expect some analysis showing why some or all of the factors that led to a conclusion of a lack of market power are no longer present or relevant. The Commission finds that Guttman has made an adequate threshold showing here, especially given the time elapsed and changes in market dynamics since the Commission granted the initial authorization.

41. To guide the analysis at hearing, the Commission intends the parties to follow the framework set out in Order No. 572. [7] Order No. 572, as codified in Part 348 of the Commission's Rules of Practice and Procedure, establishes filing requirements and

[7] *Market-Based Ratemaking for Oil Pipelines*, Order No. 572, FERC Stats. & Regs. ¶ 31,007 (1994), *aff'd sub nom. Assoc. of Oil Pipelines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996).

procedures with respect to an application by an oil pipeline for a determination that it lacks significant market power in the markets in which it proposes to charge market-based rates. Recently, the Commission issued an order where it addressed comments concerning the proper interpretation of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Mobil*[8] as it related to the Seaway Crude Pipeline Company System's (Seaway) application for market-based rates as well as its impact on the Commission's established rate regulations and policies for determining whether an oil pipeline can exercise market power.[9] In that order the Commission determined, among other things, that *Mobil* did not fundamentally alter the Commission's regulatory regime concerning market power applications of oil pipelines. As pertinent in the instant case, *Seaway* discussed the framework for examining alternatives in applicable markets and examining market concentration.

42. There have been significant changes in the ownership and operational status of pipelines which were considered as competitive alternatives to Buckeye in its prior application. With respect to Buckeye's origin markets, there was no examination of whether Buckeye possessed market power in any origin market, either in the original application or in Opinion No. 360. In addition, the methodology to measure market concentration has changed since the advent of Buckeye's original marked-based rate application.

43. Given these factors, the Complainants have some basis to argue there have been substantial changes in the circumstances relied upon by the Commission in concluding Buckeye lacked significant market power in the Pittsburgh destination market. These circumstances include a reduction in pipeline alternatives from five to three pipelines, a decrease in waterborne transportation to Pittsburgh, and a significant reduction of USAir's operations at the Pittsburgh airport. Further, Complainants argue changes in the Harrisburg destination market, including evidence that trucking from alternatives outside the BEA is not competitive, render the market uncompetitive.

44. Based on the facts presented in the instant case, the Commission thus finds that Complainants have provided sufficient evidence of substantial changes in competitive circumstances to warrant setting the Complaint for hearing to ascertain Buckeye's market power in Harrisburg, Pittsburgh, and Chelsea Junction, Pennsylvania affecting the Complainants.

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[8] *Mobil Pipeline Co. v. FERC*, 676 F.3d 1098 (D.C. Cir. 2012) (*Mobil*).

[9] *Enterprise Products Partners L.P. and Enbridge Inc.*, 146 FERC ¶ 61,115 (2014) (*Seaway*).

45. The Commission expects the Complainants to use current, up-to-date data and information to conduct a current comprehensive competitive alternative analysis during the administrative litigation process. The Commission recognizes that competitive analyses are fact and data-intensive, such that the discovery process is critical. For the analysis, the ALJ is instructed to look only at the specific origins and destinations challenged in the instant case.

46. Finally, as stated earlier, the Commission expects that, as the instant case moves forward, the analysis of whether Buckeye can exercise market power in the specified markets will follow the Commission's guidance in Order No. 572 and *Seaway*.

The Commission orders:

(A) The subject Complaint is dismissed in part, as discussed above.

(B) Pursuant to the authority conferred on the Commission by the ICA, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the ICA, the subject Complaint will be sent to hearing for the purpose of determining whether Buckeye can exercise significant market power in the three markets in Pennsylvania, as discussed in the body of this order.

(C) A Presiding Administrative Law Judge (ALJ), to be designated by the Chief ALJ, shall, within 15 days of the date of the Presiding ALJ's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The Presiding ALJ is authorized to establish procedural dates and to rule on all motions as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.